

E-Filed 7/17/2007

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re. LETICIA I. ACAYA,

Debtor.

Case Number C 07-2851 JF

ORDER¹ GRANTING JOINT
REQUEST FOR CERTIFICATION OF
APPEAL DIRECTLY TO THE NINTH
CIRCUIT COURT OF APPEALS

[re: docket no. 4]

WELLS FARGO FINANCIAL ACCEPTANCE,

Appellant,

v.

LETICIA I. ACAYA,

Appellee.

Wells Fargo Financial Acceptance (“WFFA”) appeals the order of the bankruptcy court filed May 18, 2007 in which that court sustained WFFA’s objection to the confirmation of debtor Leticia I. Acaya’s (“Acaya”) Chapter 13 plan. The parties states that the specific issues for appeal are:

¹ This disposition is not designated for publication and may not be cited.

1. Whether the Bankruptcy Court erred in relying upon the California Commercial Code's definition of "purchase money" in determining whether Wells Fargo had a purchase money security interest as Congress used that phrase in § 1325 of the Bankruptcy Code?
2. Whether Wells Fargo had a purchase money security interest as Congress used that phrase in § 1325 of the Bankruptcy Code thus preventing the use of Chapter 13 to strip down its lien?
3. Whether Wells Fargo has a purchase money security interest as that term is used in California statutes?

Joint Request 2. WFFA and Acaya jointly request certification of the appeal directly to the Ninth Circuit Court of Appeals.

A Court of Appeals has jurisdiction to hear appeals of judgments, orders, and decrees of a bankruptcy court when:

[T]he bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence,² or all the appellants and appellees (if any) acting jointly, certify that—

- (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;
- (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
- (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken; and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

28 U.S.C. § 158(d)(2)(A). WFFA and Acaya assert that the order of the bankruptcy court involves a question of law as to which there is no controlling decision of the Ninth Circuit and which requires a resolution of conflicting decisions, and that immediate appeal to the Ninth Circuit will materially advance the progress of the underlying Chapter 13 case. This joint certification as to these enumerated bases of immediate appeal is a sufficient ground for

² That sentence provides:
 "The district courts of the United States shall have jurisdiction to hear appeals
 (1) from final judgments, orders, and decrees;
 (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
 (3) with leave of the court, from other interlocutory orders and decrees;
 and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title."
 28 U.S.C. § 158(a).

1 immediate appeal to the Ninth Circuit. *See id.* Moreover, the Court has reviewed the submission
2 of the parties and concludes that they have demonstrated the existence of each of the three bases
3 for immediate appeal enumerated in 28 U.S.C. § 158(d)(2)(A). Accordingly, the joint request of
4 WFFA and Acaya will be granted. This certification remains subject to the Ninth Circuit's
5 determination as to whether to authorize the direct appeal of the bankruptcy court's order. *See id.*

6
7 IT IS SO ORDERED.

8
9 DATED: July 17, 2007.

10
11 
12 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Donald Hogan Cram , III dhc@severson.com, blb@severson.com

3 Duane M. Geck dm@severson.com

4 Notice has been delivered by other means to:

5 Devin Berham-Burk
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